

Union Calendar No. 454

100TH CONGRESS
2D SESSION**H. R. 4208****[Report No. 100-739, Part I]**

To authorize appropriations to carry out title III of the Marine Protection, Research, and Sanctuaries Act of 1972 during fiscal years 1989, 1990, 1991, and 1992.

IN THE HOUSE OF REPRESENTATIVES

MARCH 21, 1988

Mr. LOWRY of Washington (for himself, Mr. JONES of North Carolina, Mr. STUDDS, Mr. FASCELL, Mr. ALEXANDER, and Mr. HUGHES) introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

JUNE 28, 1988

Reported with an amendment, and referred to the Committee on Interior and Insular Affairs for a period ending not later than July 1, 1988, for consideration of such provisions of the bill and amendment as fall within the jurisdiction of that committee pursuant to clause 1(1), rule X.

[Strike out all after the enacting clause and insert the part printed in italic]

JULY 1, 1988

Additional sponsors: Miss SCHNEIDER, Mr. DAVIS of Michigan, Mr. FOGLIETTA, Mr. HUTTO, Mr. LIPINSKI, Mr. CARPER, Mr. BOSCO, Mr. MANTON, Mr. LEVINE of California, Mr. SAXTON, Mr. MILLER of Washington, Mr. WELDON, Mr. ORTIZ, Mrs. SAIKI, Mrs. BENTLEY, and Mr. PICKETT

July 1, 1988

Committee on Interior and Insular Affairs discharged; committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

A BILL

To authorize appropriations to carry out title III of the Marine Protection, Research, and Sanctuaries Act of 1972 during fiscal years 1989, 1990, 1991, and 1992.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*
 3 ~~That section 308 of the Marine Protection, Research, and~~
 4 ~~Sanctuaries Act of 1972 (16 U.S.C. 1438) is amended by~~
 5 ~~inserting at the end thereof the following:~~

6 ~~“(5) \$3,000,000 for fiscal year 1989.~~
 7 ~~“(6) \$3,500,000 for fiscal year 1990.~~
 8 ~~“(7) \$4,000,000 for fiscal year 1991.~~
 9 ~~“(8) \$4,500,000 for fiscal year 1992.”.~~

10 *SECTION 1. SHORT TITLE.*

11 *This Act may be cited as the “National Marine Sanctu-*
 12 *aries Program Authorization Act of 1988”.*

13 ***TITLE I—NATIONAL MARINE SANC-*** 14 ***TUARIES PROGRAM AUTHORIZA-*** 15 ***TION AND AMENDMENTS***

16 *SEC. 101. DEFINITION OF ACT.*

17 *For purposes of this title, the term “Act” means title III*
 18 *of the Marine Protection, Research, and Sanctuaries Act of*
 19 *1972 (16 U.S.C. 1431–1439).*

1 **SEC. 102. SANCTUARY DESIGNATION PROCEDURE AMEND-**
2 **MENTS.**

3 (a) *NOTICE OF DESIGNATION.*—Section 304(b)(1) of
4 the Act (16 U.S.C. 1434(b)(1)) is amended to read as fol-
5 lows:

6 “(1) *NOTICE OF DESIGNATION.*—(A) Subject to
7 subparagraph (B), not later than 120 days after the
8 last day of the period specified in subsection (a)(6), the
9 Secretary shall—

10 “(i) publish in the Federal Register—

11 “(I) notice of the designation of a na-
12 tional marine sanctuary, with final regula-
13 tions to implement the designation, and any
14 other matters required by law; and

15 “(II) notice of the availability to the
16 public of the final management plan and
17 final environmental impact statement relat-
18 ing to such sanctuary; and

19 “(ii) submit such notice of designation to the
20 Congress;

21 unless the Secretary determines, based upon the Con-
22 gressional report described in subsection (a)(6), com-
23 ments upon the draft environmental impact statement,
24 or other relevant information, not to proceed with the
25 designation.

1 “(B) The Secretary may publish and submit a
2 notice of designation in accordance with subparagraph
3 (A) not later than 150 days after the last day of the
4 period specified in subsection (a)(6) if—

5 “(i) the Secretary determines that additional
6 time is required for analysis of and response to
7 public comments relating to such designation; and

8 “(ii) the Secretary notifies the Committee on
9 Merchant Marine and Fisheries of the House of
10 Representatives and the Committee on Commerce,
11 Science, and Transportation of the Senate.

12 “(C) A determination of the Secretary not to pro-
13 ceed with the designation of a national marine sanc-
14 tuary—

15 “(i) shall be made in writing, setting forth in
16 detail the basis for the Secretary’s decision; and

17 “(ii) shall be submitted to the Committee on
18 Merchant Marine and Fisheries of the House of
19 Representatives and to the Committee on Com-
20 merce, Science, and Transportation of the Senate.

21 “(D) The Secretary shall issue a notice of desig-
22 nation with respect to a proposed national marine
23 sanctuary site not later than 30 months after the date
24 a notice declaring the site to be an active candidate for
25 sanctuary designation is published in the Federal Reg-

1 *ister under regulations issued under this Act, or shall*
2 *publish not later than such date in the Federal Regis-*
3 *ter findings regarding why such notice has not been*
4 *published.”.*

5 (b) *TAKING EFFECT OF DESIGNATION.*—Section
6 *304(b) of the Act (16 U.S.C. 1434(b)) is amended by adding*
7 *at the end the following:*

8 *“(5) TAKING EFFECT OF DESIGNATION.—The*
9 *designation of a national marine sanctuary (including*
10 *terms of the designation which are not disapproved*
11 *under this subsection) and regulations implementing*
12 *such designation shall take effect after a period of 45*
13 *days of continuous session of Congress beginning on*
14 *the day on which such notice is published pursuant to*
15 *paragraph (1), unless—*

16 *“(A) the designation or any of its terms is*
17 *disapproved by enactment of a joint resolution of*
18 *disapproval described in paragraph (3); or*

19 *“(B) in the case of a national marine sanc-*
20 *tuary that is located partially or entirely within*
21 *the seaward boundary of any State, the Governor*
22 *of the State certifies to the Secretary that the des-*
23 *ignation or any of its terms is unacceptable, in*
24 *which case the designation or the unacceptable*
25 *terms, as applicable, shall not take effect in the*

1 *area of the sanctuary lying within the seaward*
 2 *boundary of the State.”.*

3 (c) **CONFORMING AMENDMENT.**—*Section 304(b)(2) of*
 4 *the Act is amended—*

5 (1) *by striking “paragraph (1)(A) or (B)” and in-*
 6 *serting “paragraph (5)(A) or (B)”;*

7 (2) *by striking “paragraph (1)(A)” the second*
 8 *place it appears and inserting “paragraph 5(A)”;* and

9 (3) *by striking “paragraph (1)(B)” and inserting*
 10 *“paragraph (5)(B)”.*

11 **SEC. 103. PROMOTION AND COORDINATION OF RESEARCH;**

12 **SPECIAL USE PERMITS; USE OF DONATIONS.**

13 *The Act is amended—*

14 (1) *by striking section 308;*

15 (2) *by redesignating section 309 as section 308;*

16 *and*

17 (3) *by adding at the end the following:*

18 **“SEC. 309. PROMOTION AND COORDINATION OF RESEARCH.**

19 *“The Secretary shall take such action as is necessary to*
 20 *promote and coordinate the use of national marine sanctuar-*
 21 *ies for research purposes, including—*

22 *“(1) requiring that the National Oceanic and At-*
 23 *mospheric Administration, in conducting or supporting*
 24 *marine research, give priority to research involving na-*
 25 *tional marine sanctuaries; and*

1 “(2) consulting with other Federal and State
2 agencies to promote use by such agencies of one or
3 more sanctuaries for marine research.

4 **“SEC. 310. SPECIAL USE PERMITS.**

5 “(a) *ISSUANCE OF PERMITS.*—The Secretary may
6 issue special use permits which authorize the conduct of spe-
7 cific activities in a national marine sanctuary if the Secre-
8 tary determines such authorization is necessary—

9 “(1) to establish conditions of access to and use of
10 any sanctuary resource; or

11 “(2) to promote public use and understanding of a
12 sanctuary resource.

13 “(b) *PERMIT TERMS.*—A permit issued under this
14 section—

15 “(1) shall authorize the conduct of an activity
16 only if that activity is compatible with the purposes for
17 which the sanctuary is designated and with protection
18 of sanctuary resources;

19 “(2) shall not authorize the conduct of any activi-
20 ty for a period of more than 5 years unless renewed by
21 the Secretary;

22 “(3) shall require that activities carried out under
23 the permit be conducted in a manner that does not de-
24 stroy, cause the loss of, or injure sanctuary resources;
25 and

1 “(4) shall require the permittee to purchase and
2 maintain comprehensive general liability insurance
3 against claims arising out of activities conducted under
4 the permit and to agree to hold the United States
5 harmless against such claims.

6 “(c) FEES.—

7 “(1) ASSESSMENT AND COLLECTION.—The Sec-
8 retary may assess and collect fees for the conduct of
9 any activity under a permit issued under this section.

10 “(2) AMOUNT.—The amount of a fee under this
11 subsection shall be equal to the sum of—

12 “(A) costs incurred by the Secretary in issu-
13 ing the permit;

14 “(B) costs incurred by the Secretary as a
15 direct result of the conduct of the activity for
16 which the permit is issued, including costs of
17 monitoring the conduct of the activity; and

18 “(C) an amount which represents the fair
19 market value of the use of the sanctuary resource
20 and a reasonable return to the United States
21 Government.

22 “(3) USE OF FEES.—Amounts collected by the
23 Secretary in the form of fees under this section may be
24 used by the Secretary—

1 “(A) for issuing and administering permits
2 under this section; and

3 “(B) for expenses of designating and manag-
4 ing national marine sanctuaries.

5 “(d) VIOLATIONS.—Upon violation of a term or condi-
6 tion of a permit issued under this section, the Secretary
7 may—

8 “(1) suspend or revoke the permit without com-
9 pensation to the permittee and without liability to the
10 United States;

11 “(2) assess a civil penalty in accordance with sec-
12 tion 307; or

13 “(3) both.

14 “(e) REPORTS.—Each person issued a permit under
15 this section shall submit an annual report to the Secretary
16 not later than December 31 of each year which describes ac-
17 tivities conducted under that permit and revenues derived
18 from such activities during the year.

19 “(f) FISHING.—Nothing in this section shall be consid-
20 ered to require a person to obtain a permit under this section
21 for the conduct of any fishing activities in a national marine
22 sanctuary.

23 “(g) REPORT.—The Secretary of Commerce shall
24 submit an annual report to the Committee on Merchant
25 Marine and Fisheries of the House of Representatives and to

1 *the Committee on Commerce, Science, and Transportation of*
 2 *the Senate which describes activities of the Secretary in im-*
 3 *plementing this section. The Secretary shall submit the first*
 4 *report under this subsection not later than 12 months after*
 5 *the date of the enactment of this section.*

6 **"SEC. 311. COOPERATIVE AGREEMENTS AND DONATIONS.**

7 **"(a) COOPERATIVE AGREEMENTS.—***The Secretary*
 8 *may enter into cooperative agreements with any nonprofit*
 9 *organization—*

10 **"(1) to aid and promote interpretive, historical,**
 11 **scientific, and educational activities; and**

12 **"(2) for the solicitation of private donations for**
 13 **the support of such activities.**

14 **"(b) DONATIONS.—***The Secretary may accept dona-*
 15 *tions of funds, property, and services for use in designating*
 16 *and administering national marine sanctuaries under this*
 17 *title."*

18 **SEC. 104. DESTRUCTION OR LOSS OF, OR INJURY TO, SANCTU-**
 19 **ARY RESOURCES.**

20 **(a) LIABILITY FOR DESTRUCTION OR LOSS OF, OR**
 21 **INJURY TO, SANCTUARY RESOURCES.—***The Act is amend-*
 22 *ed by adding at the end the following:*

23 **"SEC. 312. DESTRUCTION OR LOSS OF, OR INJURY TO, SANCTU-**
 24 **ARY RESOURCES.**

25 **"(a) LIABILITY.—**

1 “(1) *IN GENERAL.*—Subject to paragraph (3),
2 any person who destroys, causes the loss of, or injures
3 any sanctuary resource is liable to the United States
4 for response costs and damages resulting from such de-
5 struction, loss, or injury.

6 “(2) *LIABILITY IN REM.*—Any vessel used to de-
7 stroy, cause the loss of, or injure any sanctuary re-
8 source shall be liable in rem to the United States for
9 response costs and damages resulting from such de-
10 struction, loss, or injury.

11 “(3) *DEFENSES.*—A person is not liable under
12 this subsection if—

13 “(A) that person can establish by a prepon-
14 derance of the evidence that the destruction or loss
15 of, or injury to, the sanctuary resource was
16 caused solely by an act of God, an act of war, or
17 an act or omission of a third party, and that the
18 person acted with due care;

19 “(B) the destruction, loss, or injury was
20 caused by an activity authorized by Federal or
21 State law; or

22 “(C) the destruction, loss, or injury was of a
23 de minimus nature.

24 “(b) *RESPONSE ACTIONS AND DAMAGE ASSESS-*
25 *MENT.*—

1 “(1) *RESPONSE ACTIONS.*—*The Secretary may*
2 *undertake all necessary actions to prevent or minimize*
3 *the destruction or loss of, or injury to, sanctuary re-*
4 *sources, or to minimize the imminent risk of such de-*
5 *struction, loss, or injury.*

6 “(2) *DAMAGE ASSESSMENT.*—*The Secretary*
7 *shall assess damages to sanctuary resources in accord-*
8 *ance with section 302(6).*

9 “(c) *CIVIL ACTIONS.*—

10 “(1) *RECOVERY OF RESPONSE COSTS AND DAM-*
11 *AGES.*—*The Secretary, acting as trustee for sanctuary*
12 *resources on behalf of the United States, shall com-*
13 *mence a civil action in the United States district court*
14 *for the appropriate district against any person or vessel*
15 *who may be liable under subsection (a) for response*
16 *costs and damages.*

17 “(2) *VENUE.*—*Venue for an action under this*
18 *section lies—*

19 “(A) *in any district in which the defendant*
20 *resides or may be found;*

21 “(B) *in any district in which is located the*
22 *defendant’s principal place of business;*

23 “(C) *in the district nearest to the national*
24 *marine sanctuary; and*

1 “(D) in the case of an in rem action, in any
2 district having jurisdiction over the vessel.

3 “(d) *USE OF RECOVERED AMOUNTS.*—Response costs
4 and damages recovered by the Secretary under this section
5 and civil penalties under section 307 shall be retained by the
6 Secretary in the manner provided for in section 107(f)(1) of
7 the Comprehensive Environmental Response, Compensation
8 and Liability Act (42 U.S.C. 9607(f)(1)), and used as fol-
9 lows:

10 “(1) *RESPONSE COSTS AND DAMAGE ASSESS-*
11 *MENTS.*—Twenty percent of amounts recovered under
12 this section, up to a maximum balance of \$750,000,
13 shall be used to finance response actions and damage
14 assessments by the Secretary.

15 “(2) *RESTORATION, REPLACEMENT, MANAGE-*
16 *MENT, AND IMPROVEMENT.*—Amounts remaining
17 after the operation of paragraph (1) shall be used, in
18 order of priority—

19 “(A) to restore, replace, or acquire the equiv-
20 alent of the sanctuary resources which were the
21 subject of the action;

22 “(B) to manage and improve the national
23 marine sanctuary within which are located the
24 sanctuary resources which were the subject of the
25 action; and

1 “(C) to manage and improve any other na-
2 tional marine sanctuary.

3 “(3) *USE OF CIVIL PENALTIES.*—Amounts re-
4 covered under section 307 in the form of civil penalties
5 shall be used by the Secretary in accordance with sec-
6 tion 307(e) and paragraphs (2)(B) and (C) of this sub-
7 section.

8 “(4) *FEDERAL-STATE COORDINATION.*—
9 Amounts recovered under this section with respect to
10 sanctuary resources lying within the jurisdiction of a
11 State shall be used under paragraphs (2)(A) and (B)
12 in accordance with an agreement entered into by the
13 Secretary and the Governor of that State.”.

14 (b) *DAMAGES, RESPONSE COSTS, AND SANCTUARY*
15 *RESOURCE DEFINED.*—Section 302 of the Act (16 U.S.C.
16 1432) is amended—

17 (1) by striking “and” at the end of paragraph (4);

18 (2) by striking the period in paragraph (5) and
19 inserting “; and”; and

20 (3) by adding at the end the following:

21 “(6) ‘damages’ includes—

22 “(A) compensation for—

23 “(i)(I) the cost of replacing, restoring,
24 or acquiring the equivalent of a sanctuary
25 resource; and

1 “(II) the value of the lost use of a sanc-
2 tuary resource pending its restoration or re-
3 placement or the acquisition of an equivalent
4 sanctuary resource; or

5 “(ii) the value of a sanctuary resource
6 if the sanctuary resource cannot be restored
7 or replaced or if the equivalent of such re-
8 source cannot be acquired; and

9 “(B) the cost of damage assessments under
10 section 312(b)(2);

11 “(7) ‘response costs’ means the costs of actions
12 taken by the Secretary to minimize destruction or loss
13 of, or injury to, sanctuary resources, or to minimize
14 the imminent risks of such destruction, loss, or injury;
15 and

16 “(8) ‘sanctuary resource’ means any living or
17 nonliving resource of a national marine sanctuary that
18 contributes to the conservation, recreational, ecological,
19 historical, research, educational, or aesthetic value of
20 the sanctuary.”.

21 (c) *EFFECTIVE DATE*.—Amounts in the form of dam-
22 ages received by the United States after November 30, 1986,
23 for destruction or loss of, or injury to, a sanctuary resource
24 (as that term is defined in section 302(8) of the Act (as

1 amended by this Act)) shall be subject to section 312 of the
2 Act (as amended by this Act).

3 **SEC. 105. ACTIONS WITH RESPECT TO NEW SANCTUARIES.**

4 (a) **ISSUANCE OF NOTICE OF DESIGNATION.**—The
5 Secretary of Commerce shall issue a notice of designation
6 under section 304(b)(1) of the Act (16 U.S.C. 1434(b)(1))—

7 (1) with respect to the proposed Cordell Banks
8 National Marine Sanctuary as generally described in
9 the Federal Register notice of June 30, 1983, not later
10 than December 31, 1988;

11 (2) with respect to the Flower Garden Banks Na-
12 tional Marine Sanctuary as generally described in the
13 Federal Register notice of August 2, 1984, not later
14 than March 31, 1989;

15 (3) with respect to the Monterey Bay National
16 Marine Sanctuary as generally described in the Feder-
17 al Register notice of December 31, 1979, not later than
18 December 31, 1989; and

19 (4) with respect to the Western Washington Outer
20 Coast National Marine Sanctuary as generally de-
21 scribed in the Federal Register notice of August 4,
22 1983, not later than June 30, 1990.

23 (b) **SUBMISSION OF PROSPECTUSES.**—The Secretary
24 of Commerce shall submit a prospectus under section
25 304(a)(1)(C) of the Act (16 U.S.C. 1434(a)(1)(C)) to the

1 *Committee on Merchant Marine and Fisheries of the House*
 2 *of Representatives and to the Committee on Commerce, Sci-*
 3 *ence, and Transportation of the Senate with respect to the*
 4 *Northern Puget Sound National Marine Sanctuary, as gen-*
 5 *erally described as the Washington State Nearshore area in*
 6 *the Federal Register notice of August 4, 1983, not later than*
 7 *March 31, 1991.*

8 **SEC. 106. STUDY OF AREAS FOR DESIGNATION AS OR INCLUSION**
 9 **IN NATIONAL MARINE SANCTUARIES.**

10 (a) *STUDY.*—

11 (1) *IN GENERAL.*—*The Secretary shall conduct a*
 12 *study of the areas described in subsection (c) for pur-*
 13 *poses of making determinations and findings in accord-*
 14 *ance with section 303(a) of the Act (16 U.S.C.*
 15 *1433(a))—*

16 (A) *regarding whether or not all or any part*
 17 *of such areas are appropriate for designation as*
 18 *national marine sanctuaries in accordance with*
 19 *title III of the Act; and*

20 (B) *regarding whether or not all or any part*
 21 *of the areas described in subsection (c)(1), (2),*
 22 *and (3) should be added to and administered as*
 23 *part of the Key Largo National Marine Sanctu-*
 24 *ary or the Looe Key National Marine Sanctuary.*

1 (2) *REPORT*.—Not later than 2 years after the
 2 date of the enactment of this Act, the Secretary shall
 3 submit a report to the Congress which sets forth the de-
 4 terminations and findings referred to in paragraph (1).

5 (b) *DESIGNATION OR EXPANSION OF MARINE SANC-*
 6 *TUARIES*.—If as a result of a study conducted pursuant to
 7 subsection (a) the Secretary makes the determinations and
 8 findings set forth in section 303(a) of the Act (16 U.S.C.
 9 1433(a)) with respect to all or any part of the areas described
 10 in subsection (c), the Secretary, in accordance with the proce-
 11 dures for the designation of national marine sanctuaries set
 12 forth in section 304 of the Act (16 U.S.C. 1434)—

13 (1) shall designate such areas or parts of such
 14 areas as national marine sanctuaries; or

15 (2) shall, with respect to all or any part of the
 16 areas described in subsections (c) (1), (2), and (3), add
 17 such areas or parts of such areas to the Key Largo Na-
 18 tional Marine Sanctuary or the Looe Key National
 19 Marine Sanctuary;
 20 as the Secretary considers appropriate.

21 (c) *AREAS DESCRIBED*.—The areas referred to in sub-
 22 sections (a) and (b) are the following:

23 (1) *AMERICAN SHOAL*.—The portion of the
 24 marine environment in the Florida Keys in the vicini-
 25 ty of American Shoal, including the part of such envi-

1 *ronment located generally between such shoal and the*
 2 *Marquesas Keys.*

3 (2) *SOMBRERO KEY.*—*The portion of the marine*
 4 *environment in the Florida Keys in the vicinity of and*
 5 *surrounding Sombbrero Key.*

6 (3) *ALLIGATOR REEF.*—*The portion of the*
 7 *marine environment in the Florida Keys in the vicini-*
 8 *ty of and surrounding Alligator Reef, including the*
 9 *portion located generally between such reef and the*
 10 *Key Largo National Marine Sanctuary.*

11 (4) *SANTA MONICA BAY.*—*The portion of the*
 12 *marine environment off the coast of California com-*
 13 *monly referred to as Santa Monica Bay, consisting of*
 14 *an area described generally as follows: Beginning at*
 15 *the point known as Point Dume near the western*
 16 *extent of Santa Monica Bay, proceed generally south-*
 17 *east along the shoreline to the point known as Point*
 18 *Vincente near the southern extent of Santa Monica*
 19 *Bay; then west to the 900 meter bathymetric contour;*
 20 *then generally northwest along the 900 meter bathy-*
 21 *metric contour to a point due west of Point Dume; then*
 22 *east to Point Dume at the point of beginning.*

23 (d) *DEFINITIONS.*—*For the purposes of this section—*

1 (1) *MARINE ENVIRONMENT.*—The term “marine
2 environment” has the meaning such term has in sec-
3 tion 302(3) of the Act (16 U.S.C. 1432(b)).

4 (2) *SECRETARY.*—The term “Secretary” means
5 the Secretary of Commerce.

6 **SEC. 107. ENFORCEMENT AMENDMENTS.**

7 Section 307 of the Act (16 U.S.C. 1437) is amended to
8 read as follows:

9 **“SEC. 307. ENFORCEMENT.**

10 “(a) *IN GENERAL.*—The Secretary shall conduct such
11 enforcement activities as are necessary and reasonable to
12 carry out this title.

13 “(b) *POWERS OF AUTHORIZED OFFICERS.*—Any
14 person who is authorized to enforce this title may—

15 “(1) with or without a warrant or other process—

16 “(A) board, search, inspect, and seize any
17 vessel suspected of being used to violate this title
18 or any regulation or permit issued under this title
19 and any equipment, stores, and cargo of such
20 vessel;

21 “(B) seize wherever found any sanctuary re-
22 source taken or retained in violation of this title
23 or any regulation or permit issued under this
24 title;

1 “(C) seize any evidence of a violation of this
2 title or of any regulation or permit issued under
3 this title;

4 “(2) execute any warrant or other process issued
5 by any court of competent jurisdiction; and

6 “(3) exercise any other lawful authority.

7 “(c) CIVIL PENALTIES.—

8 “(1) CIVIL PENALTY.—Any person subject to the
9 jurisdiction of the United States who violates this title
10 or any regulation or permit issued under this title shall
11 be liable to the United States for a civil penalty of not
12 more than \$50,000 for each such violation, to be as-
13 sessed by the Secretary. Each day of a continuing vio-
14 lation shall constitute a separate violation.

15 “(2) NOTICE.—No penalty shall be assessed
16 under this subsection until after the person charged has
17 been given notice and an opportunity for a hearing.

18 “(3) IN REM JURISDICTION.—A vessel used in
19 violating this title or any regulation or permit issued
20 under this title shall be liable in rem for any civil pen-
21 alty assessed for such violation and may be proceeded
22 against in any district court of the United States
23 having jurisdiction.

24 “(4) REVIEW OF CIVIL PENALTY.—Any person
25 against whom a civil penalty is assessed under this

1 subsection may obtain review in the United States dis-
2 trict court for the appropriate district by filing a com-
3 plaint in such court not later than 30 days after the
4 date of such order and simultaneously serving a copy
5 of the complaint by certified mail on the Secretary, the
6 Attorney General, and the appropriate United States
7 attorney. Upon being served such a complaint, the Sec-
8 retary shall promptly file in such court in accordance
9 with section 2112 of title 28, United States Code, a
10 certified copy of the record upon which the violation re-
11 lating to such complaint was found or such penalty im-
12 posed. The findings and order of the Secretary shall be
13 set aside by such court if they are not found to be sup-
14 ported by substantial evidence, as provided in section
15 706(2) of title 5, United States Code.

16 “(5) COLLECTION OF PENALTIES.—If any
17 person fails to pay an assessment of a civil penalty
18 under this section after it has become a final and un-
19 appealable order, or after the appropriate court has en-
20 tered final judgment in favor of the Secretary, the Sec-
21 retary shall refer the matter to the Attorney General,
22 who shall recover the amount assessed in any appropri-
23 ate district court of the United States. In such action,
24 the validity and appropriateness of the final order im-
25 posing the civil penalty shall not be subject to review.

1 “(6) *COMPROMISE OR OTHER ACTION BY SEC-*
2 *RETARY.—The Secretary may compromise, modify, or*
3 *remit, with or without conditions, any civil penalty*
4 *which is or may be imposed under this section.*

5 “(d) *FORFEITURE.—*

6 “(1) *IN GENERAL.—Any vessel (including the*
7 *vessel’s equipment, stores, and cargo) and other item*
8 *used, and any sanctuary resource taken or retained, in*
9 *any manner, in connection with or as a result of any*
10 *violation of this title or of any regulation or permit*
11 *issued under this title shall be subject to forfeiture to*
12 *the United States pursuant to a civil proceeding under*
13 *this subsection.*

14 “(2) *APPLICATION OF THE CUSTOMS LAWS.—*
15 *The Secretary may exercise the authority of any*
16 *United States official granted by any relevant customs*
17 *law relating to the seizure, forfeiture, condemnation,*
18 *disposition, remission, and mitigation of property in*
19 *enforcing this title.*

20 “(3) *DISPOSAL OF SANCTUARY RESOURCES.—*
21 *Any sanctuary resource seized pursuant to this title*
22 *may be disposed of pursuant to an order of the appro-*
23 *priate court, or, if perishable, in a manner prescribed*
24 *by regulations promulgated by the Secretary. Any pro-*
25 *ceeds from the sale of such sanctuary resource shall for*

1 *all purposes represent the sanctuary resource so dis-*
2 *posed of in any subsequent legal proceedings.*

3 “(4) *PRESUMPTION.*—*For the purposes of this*
4 *section there is a rebuttable presumption that all sanc-*
5 *tuary resources found on board a vessel that is used or*
6 *seized in connection with a violation of this title or of*
7 *any regulation or permit issued under this title were*
8 *taken or retained in violation of this title or of a regu-*
9 *lation or permit issued under this title.*

10 “(e) *PAYMENT OF STORAGE, CARE, AND OTHER*
11 *COSTS.*—

12 “(1) *IN GENERAL.*—*Notwithstanding any other*
13 *law, the Secretary may use amounts received under*
14 *this section in the form of civil penalties, forfeitures of*
15 *property, and costs imposed under paragraph (2) to*
16 *pay—*

17 “(A) *the reasonable and necessary costs in-*
18 *curred by the Secretary in providing temporary*
19 *storage, care, and maintenance of any sanctuary*
20 *resource or other property seized under this sec-*
21 *tion pending disposition of any civil proceeding*
22 *relating to any alleged violation with respect to*
23 *which such property or sanctuary resource was*
24 *seized; and*

1 “(B) a reward to any person who furnishes
2 information leading to an assessment of a civil
3 penalty, or to a forfeiture of property, for a viola-
4 tion of this title or of any regulation or permit
5 issued under this title.

6 “(2) *LIABILITY FOR COSTS.*—Any person as-
7 sessed a civil penalty for a violation of this title or of
8 any regulation or permit issued under this title, and
9 any claimant in a forfeiture action brought for such a
10 violation, shall be liable for the reasonable costs in-
11 curred by the Secretary in storage, care, and mainte-
12 nance of any sanctuary resource or other property
13 seized in connection with the violation.

14 “(f) *SUBPOENAS.*—For the purposes of conducting any
15 hearing under this section, the Secretary may issue subpoe-
16 nas for the attendance and testimony of witnesses and the
17 production of relevant papers, books, and documents, and
18 may administer oaths. Witnesses summoned shall be paid the
19 same fees and mileage that are paid to witnesses in the courts
20 of the United States. In case of contempt or refusal to obey a
21 subpoena served upon any person pursuant to this subsection,
22 the district court of the United States for any district in
23 which such person is found, resides, or transacts business,
24 upon application by the United States and after notice to
25 such person, shall have jurisdiction to issue an order requir-

1 *ing such person to appear and give testimony before the Sec-*
2 *retary or to appear and produce documents before the Secre-*
3 *tary, or both, and any failure to obey such order may be*
4 *punished by such court as contempt.*

5 “(g) *JURISDICTION.*—*The district courts of the United*
6 *States shall have jurisdiction to restrain a violation of this*
7 *title and regulations and permits issued under this title, and*
8 *to grant such other relief as may be appropriate.*

9 “(h) *USE OF RESOURCES OF STATE AND OTHER*
10 *FEDERAL AGENCIES.*—*The Secretary shall, whenever ap-*
11 *propriate, use by agreement the personnel, services, and fa-*
12 *cilities of State and other Federal departments, agencies, and*
13 *instrumentalities, on a reimbursable or nonreimbursable*
14 *basis, to carry out the Secretary’s responsibilities under this*
15 *section.*

16 “(i) *COAST GUARD AUTHORITY NOT LIMITED.*—
17 *Nothing in this section shall be considered to limit the au-*
18 *thority of the Coast Guard to enforce this or any other Feder-*
19 *al law under section 89 of title 14, United States Code.*

20 “(j) *INJUNCTIVE RELIEF.*—*If the Secretary deter-*
21 *mines that there is an imminent risk of destruction or loss of*
22 *or injury to a sanctuary resource, or that there has been*
23 *actual destruction or loss of, or injury to, a sanctuary re-*
24 *source which may give rise to liability under section 312, the*
25 *Attorney General, upon request of the Secretary, shall seek*

1 *to obtain such relief as may be necessary to abate such risk*
 2 *or actual destruction, loss, or injury, or to restore or replace*
 3 *the sanctuary resource, or both. The district courts of the*
 4 *United States shall have jurisdiction in such a case to order*
 5 *such relief as the public interest and the equities of the case*
 6 *may require.”.*

7 **SEC. 108. AUTHORIZATION OF APPROPRIATIONS; U.S.S. MONITOR**
 8 **ARTIFACTS AND MATERIALS.**

9 *The Act is amended by adding at the end the following:*

10 **“SEC. 313. AUTHORIZATION OF APPROPRIATIONS.**

11 *“There are authorized to be appropriated to the Secre-*
 12 *tary to carry out this title the following:*

13 *“(1) GENERAL ADMINISTRATION.—For general*
 14 *administration of this title—*

15 *“(A) \$1,800,000 for fiscal year 1989;*

16 *“(B) \$1,900,000 for fiscal year 1990;*

17 *“(C) \$2,000,000 for fiscal year 1991; and*

18 *“(D) \$2,100,000 for fiscal year 1992.*

19 *“(2) MANAGEMENT OF SANCTUARIES.—For*
 20 *management of national marine sanctuaries designated*
 21 *under this title—*

22 *“(A) \$2,000,000 for fiscal year 1989;*

23 *“(B) \$2,500,000 for fiscal year 1990;*

24 *“(C) \$3,000,000 for fiscal year 1991; and*

25 *“(D) \$3,250,000 for fiscal year 1992.*

1 “(3) *SITE REVIEW AND ANALYSIS.*—For review
2 and analysis of sites for designation under this title as
3 national marine sanctuaries—

4 “(A) \$450,000 for fiscal year 1989;

5 “(B) \$500,000 for fiscal year 1990;

6 “(C) \$550,000 for fiscal year 1991; and

7 “(D) \$600,000 for fiscal year 1992.

8 “SEC. 314. *U.S.S. MONITOR ARTIFACTS AND MATERIALS.*

9 “(a) *CONGRESSIONAL POLICY.*—In recognition of the
10 historical significance of the wreck of the United States ship
11 Monitor to coastal North Carolina and to the area off the
12 coast of North Carolina known as the Graveyard of the At-
13 lantic, the Congress directs that a suitable display of artifacts
14 and materials from the United States ship Monitor be main-
15 tained permanently at an appropriate site in coastal North
16 Carolina.

17 “(b) *INTERPRETATION AND DISPLAY OF ARTI-*
18 *FACTS.*—

19 “(1) *SUBMISSION OF PLAN.*—The Secretary
20 shall, within six months after the date of the enactment
21 of this section, submit to the Committee on Merchant
22 Marine and Fisheries of the House of Representatives
23 a plan for a suitable display in coastal North Carolina
24 of artifacts and materials of the United States ship
25 Monitor.

1 “(2) *CONTENTS OF PLAN.*—*The plan submitted*
2 *under subsection (a) shall, at a minimum, contain—*

3 “(A) *an identification of appropriate sites in*
4 *coastal North Carolina, either existing or pro-*
5 *posed, for display of artifacts and materials of the*
6 *United States ship Monitor;*

7 “(B) *an identification of suitable artifacts*
8 *and materials, including artifacts recovered or*
9 *proposed for recovery, for display in coastal North*
10 *Carolina;*

11 “(C) *an interpretive plan for the artifacts*
12 *and materials which focuses on the sinking, dis-*
13 *covery, and subsequent management of the wreck*
14 *of the United States ship Monitor; and*

15 “(D) *a draft cooperative agreement with the*
16 *State of North Carolina to implement the plan.*

17 “(c) *DISCLAIMER.*—*This section shall not affect the*
18 *following:*

19 “(1) *RESPONSIBILITIES OF SECRETARY.*—*The*
20 *responsibilities of the Secretary to provide for the pro-*
21 *tection, conservation, and display of artifacts and ma-*
22 *terials from the United States ship Monitor.*

23 “(2) *AUTHORITY OF SECRETARY.*—*The author-*
24 *ity of the Secretary to designate the Mariner's*
25 *Museum, located at Newport News, Virginia, as the*

1 *principal museum for coordination of activities referred*
2 *to in paragraph (1).''.*

3 **SEC. 109. CHANNEL ISLANDS NATIONAL MARINE SANCTUARY**
4 **PROTECTION.**

5 (a) *REPORT.*—*The Secretary of Transportation, not*
6 *later than 6 months after the date of the enactment of this*
7 *Act, shall transmit to Congress—*

8 (1) *the provisions of international conventions and*
9 *United States laws and regulations which reduce the*
10 *risk of a vessel collision or incident resulting in*
11 *damage to the environment in the Channel Islands Na-*
12 *tional Marine Sanctuary;*

13 (2) *the provisions of the National Contingency*
14 *Plan for removal of oil and hazardous substances pre-*
15 *pared under section 311(c) of the Federal Water Pollu-*
16 *tion Control Act (33 U.S.C. 1321(c)) which enable the*
17 *Secretary to effectively respond to an oil pollution inci-*
18 *dent in or affecting the Channel Islands National*
19 *Marine Sanctuary;*

20 (3) *a list of pollution exercises conducted under*
21 *that National Contingency Plan in the Santa Barbara*
22 *Channel before the date of the enactment of this Act,*
23 *and a schedule of pollution exercises scheduled to be*
24 *conducted under that plan in that channel during the*

1 12 months following the date of the enactment of this
2 Act; and

3 (4) a report on the establishment—

4 (A) under the Ports and Waterways Safety
5 Act (33 U.S.C. 1221 et seq.) of safety fairways
6 off the coast of California; and

7 (B) of the Long Beach NAVTEX in Long
8 Beach, California.

9 (b) *STUDY REVIEW AND REPORT.*—The Secretary of
10 Transportation shall review all Federal, State, and local
11 studies conducted on the hazards of shipping operations and
12 the risks those operations pose to the environment and natu-
13 ral resources of the Channel Islands National Marine Sanc-
14 tuary, and report to the Congress not later than 6 months
15 after the date of the enactment of this Act on the status and
16 recommendations of each of those studies. The Secretary
17 shall include in the report a recommendation on whether an
18 alternate vessel traffic separation scheme would reduce the
19 risks of shipping operations to the environment and natural
20 resources in the Channel Islands National Marine Sanctu-
21 ary.

22 (c) *PROPOSAL OF DESIGNATION OF AREA TO BE*
23 *AVOIDED.*—The Secretary of Transportation shall prepare
24 and submit a proposal to the International Maritime Organi-
25 zation to designate the portion of the Channel Islands Na-

1 *tional Marine Sanctuary which is outside of the Santa Bar-*
 2 *bara Channel Traffic Separation Scheme, as an area to be*
 3 *avoided. The Secretary shall ensure that the proposal would*
 4 *not result in undue interference with international vessel*
 5 *traffic in the Santa Barbara Channel, or with enjoyment of*
 6 *the Channel Islands National Marine Sanctuary under title*
 7 *III of the National Marine Protection, Research, and Sanc-*
 8 *tuaries Act of 1972 (16 U.S.C. 1431 et seq.).*

9 **SEC. 110. REGULATIONS.**

10 *The Secretary of Commerce shall issue regulations im-*
 11 *plementing the amendments made by this title and the*
 12 *amendments made by the Marine Sanctuaries Amendments*
 13 *of 1984 not later than one year after the date of the enact-*
 14 *ment of this Act.*

15 **TITLE II—LIABILITY FOR DE-**
 16 **STRUCTION OR LOSS OF, OR**
 17 **INJURY TO, NATIONAL PARKS**
 18 **SYSTEM RESOURCES**

19 **SEC. 201. PARK SYSTEM RESOURCES.**

20 *(a) DEFINITIONS.—As used in this title—*

21 *(1) DAMAGES.—The term “damages” includes*
 22 *the following:*

23 *(A) Compensation for—*

1 (i)(I) *the cost of replacing, restoring, or*
 2 *acquiring the equivalent of a park system re-*
 3 *source; and*

4 (II) *the value of the lost use of a park*
 5 *system resource pending its restoration or re-*
 6 *placement or the acquisition of an equivalent*
 7 *resource; or*

8 (ii) *the value of the park system re-*
 9 *source in the event the resource cannot be re-*
 10 *placed or restored; and*

11 (B) *the cost of assessments under subsection*
 12 (d).

13 (2) *RESPONSE COSTS.*—*The term “response*
 14 *costs” means the costs of actions taken by the Secre-*
 15 *tary of the Interior to minimize destruction or loss of*
 16 *or injury to park system resources, or to minimize the*
 17 *imminent risk of such destruction, loss, or injury.*

18 (3) *PARK SYSTEM RESOURCE.*—*The term “park*
 19 *system resource” means any living or nonliving re-*
 20 *source that contributes to the conservation, recreational,*
 21 *ecological, historical, or aesthetic value of the National*
 22 *Park System.*

23 (b) *LIABILITY.*—

24 (1) *IN GENERAL.*—*Subject to paragraph (3), any*
 25 *person who destroys, causes the loss of, or injures any*

1 *park system resource is liable to the United States for*
2 *response costs and damages resulting from such de-*
3 *struction, loss, or injury.*

4 (2) *LIABILITY IN REM.*—*Any vessel used to de-*
5 *stroy, cause the loss of, or injure any park system re-*
6 *source shall be liable in rem to the United States for*
7 *response costs and damages resulting from such de-*
8 *struction, loss, or injury.*

9 (3) *DEFENSES.*—*A person is not liable under*
10 *this subsection if—*

11 (A) *that person can establish by a preponder-*
12 *ance of the evidence that the destruction or loss of,*
13 *or injury to, the park system resource was caused*
14 *solely by an act of God, an act of war, or an act*
15 *or omission of a third party, and that the person*
16 *acted with due care;*

17 (B) *the destruction, loss, or injury was*
18 *caused by an activity authorized by Federal or*
19 *State law; or*

20 (C) *the destruction, loss, or injury was of a*
21 *de minimus nature.*

22 (c) *CIVIL ACTIONS.*—

23 (1) *RECOVERY OF RESPONSE COSTS AND DAM-*
24 *AGES.*—*The Secretary of the Interior, acting as trustee*
25 *for park system resources on behalf of the United*

1 *States, shall commence a civil action in the United*
2 *States district court for the appropriate district against*
3 *any person who may be liable under subsection (b) for*
4 *response costs and damages.*

5 (2) *VENUE.—Venue for an action under this sec-*
6 *tion lies—*

7 (A) *in any district in which the defendant*
8 *resides or may be found;*

9 (B) *in any district in which is located the*
10 *defendant's principal place of business;*

11 (C) *in any district where the national park*
12 *is located; and*

13 (D) *in the case of an in rem action, in any*
14 *district having jurisdiction over the vessel.*

15 (d) *RESPONSE ACTIONS AND ASSESSMENT OF DAM-*
16 *AGES.—*

17 (1) *RESPONSE ACTIONS.—The Secretary of the*
18 *Interior may undertake all necessary actions to prevent*
19 *or minimize the destruction or loss of, or injury to,*
20 *park system resources, or to minimize the imminent*
21 *risk of such destruction, loss, or injury.*

22 (2) *ASSESSMENT OF DAMAGES.—The Secretary*
23 *of the Interior shall assess damages to park system*
24 *resources.*

1 (e) *USE OF RECOVERED AMOUNTS.*—Response costs
2 and damages recovered by the Secretary of the Interior under
3 this section shall be retained by the Secretary in accordance
4 with section 107(f)(1) of the Comprehensive Environmental
5 Response, Compensation, and Liability Act (42 U.S.C.
6 9607(f)(1)), and used as follows:

7 (1) *RESPONSE COSTS AND DAMAGE ASSESS-*
8 *MENTS.*—Twenty percent of amounts recovered under
9 this section, up to a maximum balance of \$1,000,000,
10 shall be used to finance response costs and damage as-
11 sessments by the Secretary of the Interior.

12 (2) *RESTORATION, REPLACEMENT, MANAGE-*
13 *MENT, AND IMPROVEMENT.*—Amounts remaining
14 after the operation of paragraph (1) shall be used, in
15 order of priority—

16 (A) to restore, replace, or acquire the equiva-
17 lent of park system resources which were the sub-
18 ject of the action;

19 (B) to manage and improve the national
20 park of which such park system resources are a
21 part; and

22 (C) to manage and improve any other unit of
23 the National Park System.

1 **SEC. 202. INJUNCTIVE RELIEF.**

2 *If the Secretary of the Interior determines that there is*
 3 *an imminent risk of destruction or loss of or injury to a park*
 4 *system resource, or that there has been actual destruction or*
 5 *loss of or injury to such resource which may give rise to*
 6 *liability under section 201, the Attorney General, upon re-*
 7 *quest of the Secretary of the Interior, shall seek to obtain*
 8 *such relief as may be necessary to abate such risk or actual*
 9 *destruction, loss, or injury, or to restore or replace the re-*
 10 *source, or both. The district courts of the United States shall*
 11 *have jurisdiction in such a case to order such relief as the*
 12 *public interest and the equities of the case may require.*

13 **TITLE III—ABANDONED SHIP-**
 14 **WRECKS LOCATED IN NATIONAL**
 15 **MARINE SANCTUARIES**

16 **SEC. 301. MANAGEMENT OF ABANDONED SHIPWRECKS LOCAT-**
 17 **ED IN NATIONAL MARINE SANCTUARIES.**

18 *Section 6 of the Abandoned Shipwreck Act of 1987 (43*
 19 *U.S.C. 2105) is amended by adding at the end the following*
 20 *new subsection:*

21 “(f) **NATIONAL MARINE SANCTUARIES.**—*This Act*
 22 *shall not affect the management of abandoned shipwrecks lo-*
 23 *cated within the boundaries of any national marine sanctu-*
 24 *ary established under title III of the Marine Protection, Re-*

1 *search, and Sanctuaries Act of 1972 (16 U.S.C. 1431 et*
2 *seq.).”*

100TH CONGRESS
2D SESSION

H. R. 4208

[Report No. 100-739, Part I]

A BILL

To authorize appropriations to carry out title III of the Marine Protection, Research, and Sanctuaries Act of 1972 during fiscal years 1989, 1990, 1991, and 1992.

JULY 1, 1988

Committee on Interior and Insular Affairs discharged; committed to the Committee of the Whole House on the State of the Union, and ordered to be printed